

103D CONGRESS  
1ST SESSION

# S. 770

To amend the Federal Aviation Act of 1958 to authorize the Secretary of Transportation to prevent United States air carriers from engaging in predatory pricing.

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## IN THE SENATE OF THE UNITED STATES

APRIL 2 (legislative day MARCH 3), 1993

Mr. DANFORTH introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Federal Aviation Act of 1958 to authorize the Secretary of Transportation to prevent United States air carriers from engaging in predatory pricing.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Airline Predatory Pric-  
5 ing Prevention Act of 1993”.

6 **SEC. 2. AUTHORITY TO ISSUE CEASE AND DESIST ORDERS.**

7 (a) IN GENERAL.—Section 411 of the Federal Avia-  
8 tion Act of 1958 (49 App. U.S.C. 1381) is amended by  
9 adding at the end the following new subsection:

1 “(c) PREDATORY PRICING.—

2 “(1) PRELIMINARY INVESTIGATION AND CEASE  
3 AND DESIST ORDER.—

4 “(A) INVESTIGATION.—Within seven days  
5 after receiving a written complaint of sufficient  
6 particularity by any person that any air carrier  
7 has been engaging in predatory pricing in the  
8 provision of air transportation in a city-pair  
9 market, the Secretary of Transportation shall  
10 conduct a preliminary investigation into the al-  
11 legations made in the complaint.

12 “(B) CEASE AND DESIST ORDER.—If as a  
13 result of the preliminary investigation the Sec-  
14 retary finds that there is a significant likelihood  
15 that one of the two indicators of predatory pric-  
16 ing specified in paragraph (4) exists, the Sec-  
17 retary shall order such air carrier to cease and  
18 desist from engaging in the alleged predatory  
19 pricing until the conclusion of a full investiga-  
20 tion under paragraph (2) or the elapse of ninety  
21 days following the date of such order, whichever  
22 occurs first.

23 “(C) NEGATIVE FINDING.—If as a result  
24 of the preliminary investigation the Secretary  
25 finds that there is not such a significant likeli-

1           hood, the Secretary shall publish in the Federal  
2           Register an explanation of the reasons for that  
3           finding.

4           “(2) FULL INVESTIGATION AND PERMANENT  
5           CEASE AND DESIST ORDER.—

6                   “(A) INVESTIGATION.—If the Secretary of  
7           Transportation makes the finding described in  
8           paragraph (1)(B), the Secretary shall conduct a  
9           full investigation into the alleged predatory  
10          pricing. The Secretary shall, in the course of  
11          such full investigation, provide interested par-  
12          ties with an opportunity to furnish information  
13          that the Secretary considers important.

14                   “(B) PERMANENT CEASE AND DESIST  
15          ORDER.—If after conducting a full investigation  
16          under subparagraph (A) the Secretary finds  
17          that an air carrier has been engaging in preda-  
18          tory pricing, the Secretary shall order such air  
19          carrier to cease and desist from engaging in  
20          such predatory pricing.

21                   “(C) REBUTTABLE PRESUMPTION.—In a  
22          full investigation under this paragraph, an air  
23          carrier is presumed to be engaging in predatory  
24          pricing in a city-pair market if any of the two  
25          indicators of predatory pricing specified in

1 paragraph (4) is shown to exist. This presump-  
2 tion may be rebutted by clear and convincing  
3 evidence.

4 “(3) PENALTIES.—Any person who knowingly  
5 fails to obey a cease and desist order under para-  
6 graph (1) or (2) shall be subject to a civil penalty  
7 of \$10,000 for each offense, and each day during  
8 which such offense continues is deemed a separate  
9 offense.

10 “(4) INDICATORS OF PREDATORY PRICING.—  
11 The two indicators of predatory pricing referred to  
12 in paragraphs (1)(B) and (2)(C) are as follows:

13 “(A) The pricing by the air carrier for air  
14 transportation in the city-pair market at issue  
15 is below the direct operating costs of the air  
16 carrier in providing such transportation.

17 “(B) Decreases in the pricing by the air  
18 carrier for such air transportation are occurring  
19 when market forces have led to sustained down-  
20 ward development of air fares deviating signifi-  
21 cantly from ordinary seasonal pricing move-  
22 ments and resulting in widespread losses among  
23 all air carriers for providing such air transpor-  
24 tation, taking into account—

1 “(i) the level of pricing for air trans-  
2 portation in comparable city-pair markets;

3 “(ii) the revenue levels that were at  
4 the time of the transportation adequate  
5 under honest, economical, and efficient  
6 management to cover total operating ex-  
7 penses and to provide each such carrier  
8 with a flow of net income, plus deprecia-  
9 tion, adequate to support prudent capital  
10 outlays, assure the repayment of a reason-  
11 able level of debt, permit the raising of  
12 needed equity capital, and take into ac-  
13 count reasonable estimated or foreseeable  
14 future costs.

15 “(5) DIRECT OPERATING COSTS DEFINED.—In  
16 this subsection, the term ‘direct operating costs’  
17 means the costs sustained by an air carrier in the  
18 preparation and execution of a single flight of an  
19 aircraft in a city-pair market, including—

20 “(A) expenses related to the aircraft, in-  
21 cluding flight crew compensation, landing fees,  
22 fuel and oil, hull insurance, all direct and over-  
23 head costs of maintenance, and the prorated  
24 amount of the rental charge or purchase  
25 amount of the aircraft; and

1           “(B) expenses related to passengers and  
2           freight, including sales or travel agents’ com-  
3           pensation, in-flight food and beverage expenses,  
4           and liability insurance.”.

5           (b) CONFORMING AMENDMENT.—In the table of con-  
6           tents of the Federal Aviation Act of 1958, the item relat-  
7           ing to section 411 is amended by adding at the end the  
8           following:

          “(c) Predatory pricing.”.

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